IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3460 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS AND LEGAL REPRESENTATIVEOF DECD NATHUJI THAKORE
Versus
STATE OF GUJARAT

Appearance:
Mr.J.M.Patel for petitioners.
Mr.Umesh Trivedi, learned AGP for respondents.

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE J.R.VORA

Date of decision: 26/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. Rule. Mr. Umesh Trivedi, learned A.G.P. waives

service of rule on behalf of respondents.

2. This Special Civil Application dated 18.2.97 was filed in this court on 29.4.97. The petitioners have come with the case that they are the owners and were in possession of the lands bearing Survey Nos.56/1, 56/2 and 56/3 admeasuring 2 Acres -29 Gunthas, 2 Acres - 7 Gunthas and 2 Acres - 18 Gunthas respectively situated in the sim of village Dholakuva, District - Gandhinagar since the time of their ancestors and that they were cultivating the same. They also claim that there are corresponding entries in the Revenue Records in their favour. It is also stated that the possession of the said lands alongwith other lands of other owners was taken by the respondents on 23.3.96 in advance, in anticipation of the acquisition of the said lands for public purpose i.e. for use and construction of Capital Project, Gandhiangar and that at that time the petitioners were assured that they would be given compensation according to law in due course. It is then stated that when the petitioners came to know that other persons, whose lands were taken at the time when the possession of the petitioners' lands were taken, were being paid compensation, the petitioners inquired about it and they were told that no compensation was required to be paid to the petitioners in respect of the lands in question, which were claimed by the petitioners, on the ground that they were already Government lands and, therefore, no compensation was required to be paid to them.The petitioners' case is that they invited the attention of the respondents that on the application of the Personal Service Inam Abolition Act to their locality in 1961, symbolic possession of these lands was taken by the Government by adding the word "Sarkar" over their names in the Record of Rights, but as per the provisions of the said Act on the payment made on 27.7.64 by the petitioners of the required fee being three times the Government Assessment of the said lands, the same were re-granted to the petitioners and that the petitioners had shown to them the orders to the effect that the lands belonged to the petitioners. The petitioners say is that they were assured that needful would be done in the matter at the earliest. They were asked to wait. The petitioners allege that they waited for sufficient time as advised by the respondents but no compensation in respect of these lands was paid to them. The petitioners then sent a letter dated 9.2.93 to the Collector, Gandhinagar. They were then told that their letter dated 9.2.93 had been sent to the Special Land Acquisition Officer, Gandhinagar for necessary action. In October 1993 they were told that their case was sent to the Executive Engineer, Capital Project, Division

No.2, Gandhinagar for necessary action. Even after waiting for sufficient time neither any reply was given nor any relief by way of compensation was granted and, therefore, the present petition was filed. The petitioners prayer is for lawful compensation for the lands bearing Survey Nos.56/1, 56/2 and 56/3 situated in the sim of village Dholakuva, District Gandhinagar, of which the possession was taken on 23.3.66.

3. On 6.5.97 when the matter came up before the court, notice returnable on 23.6.97 was issued. Thereafter, on 9.7.97 the Court passed an order that the Officers of the Government, who can take decision in the matter may be kept present on 11.7.97. On 11.7.97 it was recorded that the Officers were present and the parties agreed to sit together, discuss and settle the matter. On 16.7.97 when the matter came up before the court, it was given out on behalf of the Government that even assuming that the petitioners were right (which requires investigation), the Government has been in actual physical possession of the lands since 1966 and that the title of the Government is perfect. Even so, at the instance of the Court, the Government had considered the matter and was prepared, without prejudice to their contentions, to pay to the petitioners same compensation and solatium which had been given to other land holders in 1967 with interest upto date. The Court recorded its impression that this will put an end to the matter and it was made clear that if any amount is to be paid, it is to be paid to the persons, who claim to be the land owners and not to the Power of Attorney Holder. The matter was then adjourned to 23.7.97. Thereafter, on 1.8.97 the matter was dismissed for the absence of the petitioners. It appears that the Petition was then restored through order passed in Misc. Civil Application No.1556/97. Thus, the restored Petition came up before the Court on 14.8.98 (Coram: Y.B.Bhatt & R.P.Dholakia,JJ). On this date i.e. 14.8.98 the Court found that it was the petitioners own case that the respondents were given the possession of the lands by the petitioners as early as on 23.3.66 i.e. 32 years ago and at best it could be said that possession was given 31 years prior to the filing of the Petition. The Court also recorded that it can not overlook the fact that this is a petition under Article 226 of the Constitution of India and that not a slightest iota of legal right under any Statute whatsoever is asserted or claimed in the Petition. It was clarified that the lands in question were never under acquisition under the Land Acquisition Act, 1894 and that voluntary possession was handed over by the petitioners. The Court noticed that there was no controversy that possession was

given as early as 23.3.66 and what was more important was that there was no controversy that the petitioners had voluntarily handed over possession to the respondents of their own free will knowing it well that the lands were not under acquisition. In view of this factual situation, the Court declined to exercise the discretionary jurisdiction under Article 226 of the Constitution of India for the simple reason that the petition suffers from delay, latches and acquiescence stretching over a period of 31 years. The petition was, therefore, dismissed with costs. It appears that thereafter a Review Application was filed by the petitioners being Misc. Civil Application No.2629/98. This Misc. Civil Application, which was in the nature of a Review Application, was decided by the Court (Coram: Y.B.Bhatt & R.P.Dholakia,JJ) on 4.5.2000 and the order dated 4.5.2000 records that, as a result of the hearing and discussion it appears that no practical solution and/or settlement is possible between the parties. It, therefore, appears that there is no option but to revoke the earlier order dated 14.8.98, whereby the main Special Civil Application was disposed of. Accordingly the Special Civil Application was revived and was directed to be heard from the stage where it was when the same was disposed of. The Misc. Civil Application was allowed and the rule was made absolute with no order as to costs.It appears that after the Misc. Civil Application was allowed on 4.5.2000, when the matter came up before the Court on 18.9.2000, the time was sought on behalf of the petitioner for moving an amendment Application.Such time was granted upto 27.9.2000. The amendment was moved on 20.11.2000. The proceedings recorded on 11.12.2000 show that no reply to this amendment was filed by the respondents and the learned A.G.P. sought time on the ground that the officers concerned were not parting with the record which was in their possession and, therefore, it was not possible for him to file the reply, although the matter had been adjourned 26 times prior to the date on which the amendment was filed. The learned AGP was, therefore, directed to write an official letter to the concerned officers to remain present before the court alongwith relevant records on 18.12.2000. The learned AGP also submitted that the grievance was raised that the compensation was not being paid, but according to him no compensation was required to be paid because lands in question belong to the Government itself. The learned AGP was, therefore, directed to file the objections in writing on or before 18.12.2000. On this very date i.e. 11.12.2000 Mr.J.M.Patel, learned counsel for the petitioners, stated that the learned AGP was acting contrary to the instruction of the Government. Mr.

Patel, learned counsel for the petitioners, was directed to substantiate the allegations because the say of the learned AGP, Mr. Umesh Trivedi, was that the Officers were acting in connivance with the present petitioners.

4. Affidavit in reply dated 20.12.2000 was then filed by one Shri R.K.Rathod, Special Land Acquisition Officer, with certain documents. On 20.12.2000 an amendment dated 20.11.2000 was allowed subject to all just objections and opportunity was granted to the learned A.G.P. to file a reply to the amended pleadings. The submission of the learned AGP was recorded to the effect that Mamlatdar, Gandhiangar and Sub Treasury Officer, Kalol had not responded to his request and the official letter seeking their assistance. The Mamlatdar, Gandhiangar and Sub Treasury Officer, Kalol were then directed to remain present before the court alongwith the copy of the relevant records on 24.1.2001. On 24.1.2001 the Mamlatdar, Gandhinagar Mr. C.L.Patel and Mr.D.C.Patel, Clerk in the Sub Treasury Office, Kalol were present. The time was sought to file affidavit of Mr.C.L.Patel and Mr. V.R. Nai, Sub Treasury Officer,Kalol that the records were not available and as to why the records were not available. The matter was then posted for 12.2.2001. Affidavit in reply under the signatures of Mr.V.R.Nai, Sub Treasury Officer, Kalol dated 12.2.2001 was then filed and thereafter, when the matter came up on 13.2.2001, learned AGP has submitted that he will be filing additional affidavit and, therefore, the matter was adjourned to 19.2.2001. No additional affidavit was thereafter filed and the matter is put before us.

5. We have narrated the factual aspects relating to various order sheets and proceedings, which were recorded in this case so as to give a ready and brief account of the proceedings. We have heard learned counsel for the petitioners and learned AGP. While the learned counsel for the petitioners has laid stress on two documents i.e. X-11 at page 53-A, which is the copy of an order passed by the Mamlatdar, Gandhinagar on 20.5.68 and a copy of yet another order dated 20.5.68 passed by the Mamlatdar, Gandhinagar at X-12 at page 53-C as also the entries in the Revenue Records, the copies of the Revenue Records at Sr.Nos. 342 and 343 at page Nos. 25 and 24 respectively, as also the entry, the copy of which is at page 26.

6. Mr. Umesh Trivedi, learned A.G.P. submits that identical petitions were filed before this Court, but the same have been rejected. But he is not able to give any

particulars of such petitions; either with regard to the number or with regard to the parties or with regard to the date on which they were decided. Mr. Umesh Trivedi, learned A.G.P. has laid stress with pointed reference to the Certificate, zerox of which is at Annexure -I with the affidavit - in reply filed by the Sub Treasury Officer, Kalol dated 12.2.2001 and he has submitted that the original document is not available. Signatures have been shown to be illegible on this document and that the date of this document is 11.3.86, which has been certified by some Assistant Information Director.

7. Thus on the basis of the submissions, which have been made before us and the documents, on which reliance has been placed by the respective parties, it appears that it is a case of disputed questions of facts. The parties are at dispute on the basic fact as to whether the lands belong to the petitioners or not. This dispute with regard to the title of the lands in question, so as to claim compensation in lieu thereof, cannot be adjudicated in the proceedings under Article 226 of the Constitution of India. Mr. J.M.Patel has submitted that the documents available on record would show that it is only a case of illusory dispute and no real or genuine dispute of facts exists between the parties and, therefore, this Court may interfere and exercise its discretionary jurisdiction under Article 226 and adjudicate upon the matter and the Government be directed to compensate the petitioners. In our considered opinion, we find that it is difficult to resolve the dispute about the title of these lands effectively in these proceedings on the basis of the material, as has been placed before us. Indifferent attitude of the concerned Mamlatdar, Gandhinagar and Collector, Gandhinagar has further contributed to the question of deciding the title and the petitioners' claim. In such a situation, two alternatives are left; either the petitioners may be relegated to the remedy of filing a Civil Suit so as to establish their title and claim compensation in lieu of the lands, which have been taken over, possession of which was given by the petitioners to the respondents or some arrangement may be directed to be made at the Government level to make a report and decide as to whether the petitioners are entitled to any compensation in the facts of the present case. Mr. J.M.Patel has submitted that after so many years i.e. after a lapse of a period of more than 30 years, it will be difficult if the petitioners are relegated to the remedy of filing a Civil Suit so as to claim the compensation. In the [[Apeculiar facts of this case and looking to the chequered history and the manner in which

the proceedings had taken place in this case, we find it appropriate to direct the Chief Secretary of the State of Gujarat to appoint a high level Officer of the Government of Gujarat, not below the rank of Addl. Chief Secretary, to examine the grievance of the petitioners and to decide as to whether the petitioners are entitled to any compensation in lieu of the lands, which were given by the petitioners and possession was taken over by the respondents way back in the year 1966. A copy of this order shall be sent to the Chief Secretary of the State of Gujarat, who shall nominate the Officer not below the rank of Additional Chief Secretary, who shall decide the controversy within a period of three months from the date he receives his nomination. The Addl. Chief Secretary, so nominated by the Chief Secretary, shall fix a date of hearing and after affording an opportunity to the petitioners, the matter shall be decided by a reasoned order, to be communicated to the petitioners.

8. This Special Civil Application is disposed of in the terms as aforesaid and the rule is hereby discharged. No order as to costs.

(M.R.Calla,J)

(J.R.Vora,J)